

## Bureau of Land Management, Interior

## § 3851.5

Statutes (30 U.S.C. 28) will render the claim subject to cancellation.

(b) Except as provided in § 3851.5 and subpart 3852, failure to perform the assessment work required under § 3851.1 causes the interest of the claimant(s) in the minerals subject to the mining laws to revert back to the public domain.

(c) 30 U.S.C. 28f, with certain exceptions for small miners, temporarily suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual \$100 maintenance fee per mining claim in lieu of the assessment work. For oil shale claims, the Energy Policy Act of 1992 (30 U.S.C. 242) suspends and supersedes the requirement to perform assessment work under § 3851.1, and requires the payment of an annual \$550 rental fee per oil shale mining claim in lieu of the assessment work. The maintenance fee requirements and waivers from the maintenance fee are described in §§ 3833.0–3(f), 3833.1–5, 3833.1–6, and 3833.1–7 of this title.

[37 FR 17836, Sept. 1, 1972, as amended at 58 FR 38202, July 15, 1993; 59 FR 44863, Aug. 30, 1994; 64 FR 47022, Aug. 27, 1999; 67 FR 38206, June 3, 2002]

### **§ 3851.4 Failure of a co-owner to contribute to annual assessment work; or to the payment of maintenance fees.**

(a) Upon the failure of any co-owner of a mining claim or mill or tunnel site to contribute the proper proportion of the required expenditures, the co-owners who have performed the labor, made improvements, paid the maintenance fee required under §§ 3833.1–5 and 3833.1–6 of this title, may, at the expiration of the assessment year, give such delinquent co-owner personal notice of this failure in writing. Alternatively, this notice may be given by publication in the newspaper published nearest the claim for at least once a week for 90 days. If, upon the expiration of 90 days, after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute the proportionate share of such expenditures or improvements, such interest in the

claim by law passes to the co-owners who have made the expenditures or improvements.

(b) A claimant alleging ownership of a forfeited interest under paragraph (a) of this section who requests the authorized officer to change the ownership records of the affected mining claims or sites shall present the following:

(1) Statement of the publisher of the newspaper as to the facts of publication, giving the beginning and ending dates of publication, a printed copy of the notice published, and a statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute, or

(2) Evidence of personal notice of delinquency upon the delinquent party. If notice is effected by mail, the minimum sufficient evidence shall consist of a copy of the notice and a copy of the return receipt of the U.S. Postal Service evidencing receipt by the delinquent party of a registered or certified envelope containing the notice. If notice was made in person, an affidavit signed and dated on the date of notice will suffice as evidence of such notice; and

(3) In all cases, a signed and dated statement by the claimant that the delinquent co-owner failed to contribute the proper proportion within the period fixed by the statute.

(c) Upon determination by the authorized officer that paragraphs (a) and (b) of this section have been complied with, the BLM records of the mining claim shall be changed pursuant to § 3833.3 of this title. Such a change in ownership requires that the claimant submit the service charge required for a transfer of interest pursuant to § 3833.1–4 of this title.

(d) Active duty military personnel who give notice and comply with § 3851.6 are not subject to the provisions of this section.

[59 FR 44863, Aug. 30, 1994]

### **§ 3851.5 Assessment work not required after allowance of mineral entry.**

Performance of annual assessment work and payment of maintenance fees is not required after the date that the mineral entry has been allowed.

## **§ 3851.6**

(a) The assessment year in which the mineral entry is allowed is the first assessment year for which the assessment work and payment of maintenance fees is no longer required, and assessment work is not required in any assessment year thereafter until a mineral patent issues.

(b) If a mineral entry is canceled in whole or in part, the mining claims and mill sites that are no longer covered by the mineral entry shall be subject to the assessment work requirement, or the payment of maintenance fees, beginning in the next assessment year following the assessment year that the mineral entry was canceled.

[59 FR 44863, Aug. 30, 1994]

### **§ 3851.6 Assessment work not required for active duty military personnel.**

Pursuant to the Soldiers' and Sailors' Relief Act (50 U.S.C. Appendix 565), a person entering active military service is exempt from the performance of annual assessment work under this subpart for each assessment year in which the service person is on active duty.

(a) To claim the exemption, the person entering active military service shall file, or cause to be filed with the proper BLM office, a notice of his or her entry into active military service. The notice shall be filed in the assessment year that the person entered active duty status.

(b) The filing of the notice exempts the person from performing assessment work or paying the maintenance fees until 6 months have passed from the person's release from active duty status, or until 6 months have passed from release from a military hospital, whichever is later.

(c) The performance of assessment work or the payment of maintenance fees shall resume in the assessment year beginning at least 6 months after the date the person was released from active duty or a military hospital, whichever is later.

(d) The notice shall be filed as a certified statement pursuant to section 3833.1-7 of this title, and shall list all mining claims and sites affected by claim name and BLM serial number.

[59 FR 44863, Aug. 30, 1994]

## **43 CFR Ch. II (10-1-02 Edition)**

### **Subpart 3852—Deferment of Assessment Work**

SOURCE: 35 FR 9753, June 13, 1970, unless otherwise noted.

#### **§ 3852.0-3 Authority.**

The Act of June 21, 1949 (63 Stat. 214; 30 U.S.C. 28b-c), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

#### **§ 3852.1 Conditions under which deferment may be granted.**

The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

#### **§ 3852.2 Filing of petition for deferment, contents.**

(a) In order to obtain a deferment, the claimant shall file with the proper BLM office a petition in duplicate requesting such a deferment. No particular form of petition is required, but the applicant shall attach to one copy thereof a copy of the notice to the public required by 30 U.S.C. 28e showing that it has been filed or recorded in the local recording office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one-year period for which deferment is requested. Each petition shall be accompanied by a \$25 nonrefundable service charge.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or